

MARK R.S. FOSTER (SBN 223682)
mark.foster@skadden.com
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 UNIVERSITY AVE.
Palo Alto, California 94301
Telephone: (650) 470-4500
Facsimile: (650) 470-4570

PETER B. MORRISON (SBN 230148)
peter.morrison@skadden.com
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071
Telephone: (213) 687-5000
Facsimile: (213) 687-5600

Attorneys for Defendants Scott W. H. Seu, Thomas B. Fargo, Celeste A. Connors, Elisia K. Flores, Peggy Y. Fowler, Micah A. Kane, Yoko Otani, Richard J. Dahl, Keith P. Russell, Michael J. Kennedy, William James Scilacci, Jr., Eva T. Zlotnicka, Mary G. Powell, Constance H. Lau, Paul K. Ito, Gregory C. Hazelton, James K. Scott, Kevin H. Taketa and Jeffrey N. Watanabe and Nominal Defendant Hawaiian Electric Industries, Inc.

[Additional counsel listed on signature page]

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE HAWAIIAN ELECTRIC
INDUSTRIES, INC. and
HAWAIIAN ELECTRIC
COMPANY, INC. DERIVATIVE
LITIGATION

) Case No. 3:23-cv-06627-JSC

) **DERIVATIVE ACTION**

) **STIPULATION AND [PROPOSED] ORDER TO
CONTINUE NOVEMBER 7, 2024 HEARING IN
LIGHT OF MEDIATION**

) Honorable Jacqueline Scott Corley

Pursuant to Civil Local Rules 6-2 and 7-12 of the Northern District of California Civil Local Rules (“Civil Local Rule”), plaintiffs Patrick Kallaus (“Kallaus”), Michael Cole (“Cole”), and Alexander Tai (“Tai,” and together with Kallaus and Cole, “Plaintiffs”) in the above-captioned action (the “Consolidated Derivative Action”); defendants Timothy E. Johns, James A. Ajello, Scott W. H. Seu, Thomas B. Fargo, Celeste A. Connors, Elisia K. Flores, Peggy Y. Fowler, Micah A. Kāne, Yoko Otani, Richard J. Dahl, Keith P. Russell, Michael J. Kennedy, William James Scilacci, Jr., Mary E. Kipp, Alana K. Pakkala, Toby B. Taniguchi, Kevin M. Burke, Eva T. Zlotnicka, Mary G. Powell, Constance H. Lau, Paul K. Ito, Gregory C. Hazelton, Shelee M. T. Kimura, Tayne S. Y. Sekimura, James K. Scott, Kevin H. Taketa, and Jeffrey N. Watanabe (collectively, the “Individual Defendants”); nominal parties Hawaiian Electric Industries, Inc. (“HEI”) and Hawaiian Electric Company, Inc. (“HECO,” and together with HEI and the Individual Defendants, “Defendants”); and Proposed Intervenor George Assad, Robert Faris, and Christina Rice (together with Plaintiffs and Defendants, the “Parties”), hereby agree and stipulate subject to the terms below that good cause exists to request an order from the Court adjourning the oral arguments scheduled for November 7, 2024, to enable the Parties to conduct settlement negotiations.

A. On March 19, 2024, the Court entered an order to consolidate *Kallaus v. Johns, et al.*, No. 3:23-cv-06627-JSC (N.D. Cal.), *Cole v. Johns, et al.*, No. 3:24-cv-00598-JSC (N.D. Cal.), and *Tai v. Seu, et al.*, No. 3:24-cv-01198-JSC (N.D. Cal.) into the above-captioned action. (ECF No. 17)

B. On July 8, 2024, HEI filed a motion to dismiss, or in the alternative, stay this case. (ECF Nos. 29-30.)

C. On September 11, 2023, Christina Rice, filed a shareholder derivative action regarding the 2023 Maui wildfires, captioned *Rice v. Connors*, No. 1CCV-23-0001181 (DEO) (Haw. 1st Cir. Ct.) in Hawai‘i state court.

D. On October 4, 2023 Plaintiff George Assad issued a litigation demand pursuant to HRS §414-173 to the HEI Board of Directors regarding the 2023 Maui wildfires.

E. On January 8, 2024 Plaintiff Robert Faris issued a litigation demand pursuant to HRS §414-173 to the HEI Board of Directors regarding the 2023 Maui wildfires.

1 F. On April 8, 2024, Plaintiff George Assad filed a shareholder derivative action on
2 behalf of HEI in the United States District Court for the District of Hawai‘i after determining that
3 his October 4, 2023 litigation demand was wrongfully refused.

4 G. On June 8, 2024, Plaintiff Robert Faris filed a factually-related shareholder derivative
5 action on behalf of HEI in the District of Hawai‘i after determining that his January 8, 2024 litigation
6 demand pursuant to HRS §414-173 was wrongfully refused.

7 H. On July 3, 2024, the Hawai‘i District Court consolidated the Assad and Faris Actions
8 and appointed the law firms of Robbins LLP and Robbins Geller Rudman & Dowd LLP as Co-Lead
9 Counsel and the Law Office of Carl M. Varady as Liaison Counsel.

10 I. On August 15, 2024, Plaintiffs Assad and Faris filed a materially similar Verified
11 Consolidated Shareholder Derivative Complaint for Breach of Fiduciary Duty, Waste of Corporate
12 Assets, and Unjust Enrichment, captioned *In re Hawaiian Electric Industries, Inc., Stockholder*
13 *Derivative Litigation*, Lead Case No.: 1:24-CV-00164-MWJS-WRP, in the Federal Court for the
14 District of Hawai‘i.

15 J. On August 8, 2024, Hawai‘i federal court Plaintiffs George Assad and Robert Faris
16 filed a motion to intervene and to dismiss or stay in this action. (ECF No. 39.)

17 K. On September 12, 2024, Hawai‘i state court Plaintiff Christina Rice filed a similar
18 motion to intervene and to dismiss or stay in this action. (ECF No. 48.)

19 L. Oral argument on each of the above motions is currently scheduled for November 7,
20 2024.

21 M. The Parties have agreed to conduct a mediation before David M. Murphy of Philips
22 ADR Enterprises. (<https://phillipsadr.com/our-team/david-m-murphy/>.) The Parties are in the
23 process of scheduling mediation sessions at the end of December, 2024 or January, 2025. At the
24 present time, the Parties are working towards coordinating schedules among counsel, party
25 representatives, and insurance carriers, which is why a date certain has not yet been set.

N. The Parties believe that continuing the scheduled oral arguments to January 30, 2025 will facilitate a productive mediation and will also best serve the interests of judicial economy and efficiency, for both the Court and the Parties.

NOW, THEREFORE, the Parties stipulate and agree, subject to approval of the Court, as follows:

1. The hearing on the pending motions currently scheduled for November 7, 2024 shall be continued to January 30, 2025.

2. Once the parties identify a date for the mediation in late December of January, the parties shall file a status report alerting the Court of the date selected for mediation.

3. Within three business days of the mediation's completion, the parties shall file a status report informing the Court of the mediation's outcome.

4. This stipulation shall be without prejudice to or waiver of any Parties' claims, rights, defenses, and arguments.

IT IS SO STIPULATED.

DATED: November 4, 2024

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ Mark R.S. Foster
Mark R.S. Foster

Attorneys for Defendants Scott W. H. Seu, Thomas B. Fargo, Celeste A. Connors, Elisia K. Flores, Peggy Y. Fowler, Micah A. Kane, Yoko Otani, Richard J. Dahl, Keith P. Russell, Michael J. Kennedy, William James Scilacci, Jr., Eva T. Zlotnicka, Mary G. Powell, Constance H. Lau, Paul K. Ito, Gregory C. Hazelton, James K. Scott, Kevin H. Taketa and Jeffrey N. Wanabe and Nominal Defendant Hawaiian Electric Industries, Inc.

DATED: November 4, 2024

ALLEN OVERY SHEARMAN STERLING US LLP

By: /s/ Daniel H.R. Laguardia
Daniel H.R. Laguardia (SBN 314654)
140 New Montgomery Street
San Francisco, CA 94105

Adam S. Hakki (pro hac vice forthcoming)
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-4000

Attorneys for Defendants Timothy E. Johns, James A. Ajello, Mary E. Kipp, Alana K. Pakkala, Toby B. Taniguchi, Kevin M. Burke, Shelee M. T. Kimura, Tayne S. Y. Sekimura, and Nominal Defendant Hawaiian Electric Company, Inc.

DATED: November 4, 2024

WOLF HALDENSTEIN ADLER FREEMAN & HERZ
LLP

By: /s/ Betsy C. Manifold

Betsy C. Manifold (SBN 182450)
Alex J. Tramontano (SBN 276666)
750 B Street, Suite 1820
San Diego, California 92101
Telephone: (619) 239-4599

GAINEY McKENNA & EGLESTON
Gregory M. Egleston (pro hac vice forthcoming)
501 Fifth Avenue, 19th Fl.
New York, New York 10017
Phone: (212) 983-1300

Attorneys for Plaintiff Patrick Kallaus

DATED: November 4, 2024

WOLF HALDENSTEIN ADLER FREEMAN & HERZ
LLP

By: /s/ Betsy C. Manifold

Betsy C. Manifold (SBN 182450)
Alex J. Tramontano (SBN 276666)
750 B Street, Suite 1820
San Diego, California 92101
Telephone: (619) 239-4599

RIGRODSKY LAW, P.A.
Seth D. Rigrodsky (pro hac vice forthcoming)
Timothy J. MacFall (pro hac vice forthcoming)
Gina M. Serra (pro hac vice forthcoming)
Vincent A. Licata (pro hac vice forthcoming)
Samir Aougab (pro hac vice forthcoming)
825 East Gate Boulevard, Suite 300
Garden City, New York 11530
Telephone: (516) 683-3516

GRABAR LAW OFFICE
Joshua H. Grabar (pro hac vice forthcoming)
One Liberty Place

1 1650 Market Street, Suite 3600
2 Philadelphia, Pennsylvania 19103
3 Telephone: 267-507-6085

Attorneys for Plaintiff Michael Cole

4 DATED: November 4, 2024

THE ROSEN LAW FIRM, P.A.

5
6 By: /s/ Laurence M. Rosen

Laurence M. Rosen, Esq. (SBN 219683)
355 S. Grand Avenue, Suite 2450
Los Angeles, California 90071
Telephone: (213) 785-2610

Attorneys for Plaintiff Alexander Tai

9
10 DATED: November 4, 2024

ROBBINS GELLER RUDMAN & DOWD LLP

11
12 By: /s/ Travis E. Downs III

Travis E. Downs III (SBN 148274)
Randall J. Baron (SBN 150796)
Benny C. Goodman III (SBN 211302)
655 West Broadway, Suite 1900
San Diego, California 92101
Telephone: 619-231-1058

13
14
15
16 CARL M. VARADY
Pauahi Tower
1003 Bishop Street, Suite 1730
17 Honolulu, Hawaii 96813
18 Telephone: 808-523-8447

19 ROBBINS LLP
Brian J. Robbins
Gregory E. Del Gaizo
20 Ashley R. Rifkin
Jacob W. Ogbozo
21 5060 Shoreham Place, Suite 300
22 San Diego, California 92122
Telephone: 619-525-3990

23 RM LAW, P.C.
Richard A. Maniskas
24 1055 Westlakes Drive, Suite 300
25 Berwyn, Pennsylvania 19312
Telephone: 484-324-6800

26 *Attorneys for Proposed Intervenor*
27 *George Assad and Robert Faris*
28

1 DATED: November 4, 2024

BOTTINI & BOTTINI, INC.

2 By: /s/ Francis A. Bottini, Jr.

3 Francis A. Bottini, Jr. (SBN 175783)

4 7817 Ivanhoe Avenue, Suite 102

5 La Jolla, California 92037

6 Telephone: (858) 914-2001

Attorneys for Proposed Intervenor Christina Rice

7 Pursuant to Civil Local Rule 5-1(i)(3), all signatories concur in filing this stipulation.

8 DATED: November 4, 2024

9 By: /s/ Mark R.S. Foster

10 Mark R.S. Foster

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: November ____, 2024

HONORABLE JACQUELINE SCOTT CORLEY
UNITED STATES DISTRICT JUDGE